

# **EXHIBIT 39**

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

COPART INC.,

Plaintiff,

vs.

No. C 07 02684 CW

CRUM & FORSTER INDEMNITY  
COMPANY, UNITED STATES FIRE  
INSURANCE COMPANY, and DOES  
1-10,

Defendants.

CERTIFIED  
COPY

---

AND RELATED COUNTERCLAIMS.

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DEPOSITION OF MICHAEL W. CARSON

San Francisco, California

Tuesday, May 20, 2008

Reported by:

DARCY J. BROKAW

RPR, CRR, CLR, CSR No. 12584

Job No. 86979

1 UNITED STATES DISTRICT COURT  
2 NORTHERN DISTRICT OF CALIFORNIA  
3 OAKLAND DIVISION

4 COPART INC.,

5 Plaintiff,

6 vs.

No. C 07 02684 CW

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INSURANCE COMPANY, and DOES  
9 1-10,

10 Defendants.

11  
12 AND RELATED COUNTERCLAIMS.  
13  
14

15 DEPOSITION OF MICHAEL W. CARSON,  
16 taken on behalf of Defendant United States Fire Insurance  
17 Company, at Bullivant Houser Bailey PC, 601 California  
18 Street, Suite 1800, San Francisco, California, beginning at  
19 9:04 a.m. and ending at 4:40 p.m., on Tuesday, May 20, 2008,  
20 before me, DARCY J. BROKAW, RPR, CRR, CLR, CSR No. 12584.  
21  
22  
23  
24  
25

APPEARANCES

For the Plaintiff, Copart, Inc.:

PILLSBURY & LEVINSON, LLP  
BY: ERIK L. LARSON, ESQ.  
600 Montgomery Street, 31st Floor  
San Francisco, California 94111  
415-433-8000  
rlarson@pillsburylevinson.com

For the Defendant United States Fire Insurance Company:

BULLIVANT HOUSER BAILEY PC  
BY: SAMUEL H. RUBY, ESQ.  
601 California Street, Suite 1800  
San Francisco, California 94108  
415-352-2700  
samuel.ruby@bullivant.com

1 San Francisco, California, Tuesday, May 20, 2008

2 9:04 a.m. - 4:40 p.m.

3

4 MICHAEL W. CARSON,  
5 having been first duly sworn, was examined and testified as  
6 follows:

7 EXAMINATION

8 BY MR. RUBY:

9 Q Could you state your full name, please.

10 A Michael W. Carson.

11 Q Mr. Carson, my name, again, is Sam Ruby.  
12 I'm the attorney for the defendant in this case, and  
13 I've asked you to come here today to answer some  
14 questions.

15 Have you sat for a deposition before?

16 A Yes.

17 Q More than once?

18 A Three or four times.

19 Q All right. I'll assume, then, that you're  
20 familiar with the process. Let me just remind you  
21 of a couple of key issues that can affect the  
22 process.

23 One is that although we're in an informal  
24 setting here today and informal settings tend to  
25 induce conversation, it's important that we not talk

1 We'll try to take some breaks at sort of  
2 key chronological times, but if at any point you  
3 need to take an unscheduled break, just let me know  
4 and we'll try to accommodate you.

5 All right. With that, first I need to get  
6 some basic background information from you.

7 Are you currently employed with Copart?

8 A Yes.

9 Q What is your current position or title?

10 A National property manager.

11 Q How long have you been the national  
12 property manager?

13 A Late '99 or early 2000.

14 Q What are your responsibilities as national  
15 property manager?

16 A I am responsible for all of Copart's 146  
17 American yards facilities, including Canada and  
18 Alaska, the two facilities we have in Canada and the  
19 16 facilities we have in the United Kingdom, Great  
20 Britain, England, Ireland and -- England, Scotland  
21 and Wales.

22 Q And when you say you're responsible for  
23 the properties, what in particular are you  
24 responsible for?

25 A Well, basically I was responsible for

1 distinguishment between the properties like we're  
2 making. They pull all the permits. So that's what  
3 this is about. I didn't want to be --

4 Q All right. Well, thanks. I appreciate  
5 that.

6 Although we've been talking about the City  
7 of Hialeah side and the City of Miami side, both of  
8 those cities are in Miami-Dade County, correct?

9 A Yes. This is actually Miami-Dade County.  
10 It's not in Miami city.

11 Q Okay.

12 A And this is actually in the City of  
13 Hialeah.

14 Q And the truck depot, it's in the county;  
15 is it part of the city?

16 A No.

17 MR. RUBY: All right. This will be  
18 Exhibit 56.

19 (Defendant's Exhibit 56 marked  
20 for identification)

21 BY MR. RUBY:

22 Q Exhibit 56 is also from the Copart  
23 production. And it'll not the same but a similar  
24 form to what we just looked at.

25 Now, sir, can you tell me whether this

1 BY MR. RUBY:

2 Q 58 is another document from the Copart  
3 production. Sir, can you tell me what it is?

4 A It appears to be my final Certificate of  
5 Occupancy for the truck terminal property on the  
6 Miami-Dade side.

7 Q Okay. And just for the record, can you  
8 explain what a Certificate of Occupancy is or  
9 signifies in this process?

10 A This would be the final document that you  
11 receive from a building department or licensing  
12 authority that basically says that your construction  
13 is finished and has been completed and all proper  
14 inspections have been done and signed. All of the  
15 municipalities or the city's reviewing departments,  
16 fire, water, et cetera, have inspected and signed  
17 off, and this would be the final okay to actually  
18 occupy the property. No further construction.

19 Q Now, right about the middle, you see  
20 there's a line that says "date of CO," Certificate  
21 of Occupancy, "Issuance." Are you with me?

22 A I gotcha.

23 Q Okay. And the best I can make out on this  
24 copy is that it's an August '05, but Lord knows  
25 what's between. Do you have any idea?



1 (Defendant's Exhibit 73 marked  
2 for identification)

3 BY MR. RUBY:

4 Q All right. Exhibit 73 is an e-mail chain  
5 from the Copart production, and the one I want to  
6 focus on, Mr. Carson, is the one in the middle, from  
7 you to Mr. Franklin on September 14th of 2006.

8 Do you see that?

9 A Yes.

10 Q Okay. Now, I don't know if this is the  
11 second e-mail you had in mind, but this is a second  
12 e-mail now concerning the damage to the building.  
13 Is this the second e-mail you had in mind, or did  
14 you have something else in mind?

15 A No. Actually, if there had been any kind  
16 of short, shoot-from-the-hip estimate given before,  
17 it would have been before August.

18 Q Okay.

19 A And I don't know if there was or not. The  
20 people in my company seem to think that I know  
21 something about construction, and they think that I  
22 can pull numbers out of my pocket and say: This is  
23 what it should be. And I've been very fortunate  
24 over the years to be very close with those numbers,  
25 but I always qualify them as they come out of the

1 pocket, they're shooting from the hips.

2 And there could have been a  
3 shoot-from-the-hip number earlier than the  
4 August 28th number. But the August 28th Exhibit 72  
5 number was more than just an educated guess; it was  
6 based on experience and research.

7 Q In that time frame immediately after the  
8 hurricane, when there was some hope that perhaps the  
9 building could be repaired as opposed to demol'ed  
10 and rebuilt, did you have even a shoot-from-the-hip  
11 figure in that time as to how much the repair would  
12 cost?

13 A To be honest with you, I don't think I  
14 did. It's possible I shot a number out there; but  
15 after examining the building myself, the cost of  
16 repairing the building, seeing the structural damage  
17 of the embeds, it was such that my gut was we were  
18 better off tearing it down and putting a new one up.

19 That's not to say I couldn't have repaired  
20 it. If you give me the money and the time, mostly  
21 the money, I can rebuild 9/11. But my gut was that  
22 the building was in pretty bad shape. Because it  
23 wasn't a new building; it was an old trucking  
24 terminal. So if I put a number out there, it's very  
25 possible, but I don't recall.

1 and from TBT, harder estimates for the construction  
2 of this -- of the project based on the plans we have  
3 now.

4 Q Okay.

5 A And I had done some work on the computer  
6 using the Means, M-e-a-n-s, Construction Index,  
7 which is a nationwide construction organization that  
8 does average prices per square foot per  
9 jurisdiction, by zip code or by county or whatever  
10 that uses the guide when estimating.

11 I went back and ran some of those  
12 programs, and then I sat down with those Means  
13 analyses with the just-received TBT firmer estimate,  
14 and with the Dov Liven architect estimate, the  
15 one-pager he had sent me, or three-pager, whatever  
16 it is, and I went back and tried to redo my numbers  
17 that I had done on this e-mail dated August 28th,  
18 2006, Exhibit 72.

19 So the hen scratching you see there is my  
20 work product that was intended for myself.

21 Q Okay. Let's see. In the pile I handed  
22 you, can you pull out the latest TBT estimate?

23 Can you hand that to the court reporter,  
24 and we'll mark that as 75.

25

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1 gut? Who do you trust? Do you trust the low bidder  
2 or not? And then we determine how the job goes from  
3 that.

4 During that negotiating process, the  
5 subcontractors are selected. We come up with the  
6 final number, and it's a hard number; it's done.

7 Q All right. Then let's talk about  
8 Exhibit 76 then. Is this an estimate that you asked  
9 Mr. Liven to provide to you?

10 A Yes.

11 Q Is this also based on his plans?

12 A Yes.

13 Q All right. Then going to Exhibit 77,  
14 which is the Square Foot Cost Estimate Report "A",  
15 can you explain to me again what this is?

16 A Means Construction, that sponsors programs  
17 for builders, where you're basically estimating  
18 programs, and they're for any member of Associated  
19 Builders and Contractors, AGC; and they're used for  
20 estimating, but they're also used as support data.

21 If you have a contractor here in  
22 California and he decides he's got a good customer,  
23 the customer wants him to build in Hialeah, Florida;  
24 the guy going into the contract goes into Hialeah,  
25 Florida, doesn't know that market. So he wants to

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1 get some reality, because he's in a negotiating  
2 stage, too, with his owner that he's going to build  
3 for. They give him real numbers they can work with.

4 So what this is, Means is a tool that  
5 says, well, if you're doing strip footing, concrete  
6 reinforced, load level 11.1 kilos lineal foot, then  
7 that price should be 2.11 per lineal foot or square  
8 foot. And you try to build off of the computer  
9 programs as close to what you have in your hands  
10 from the owner to go back to him and say, well,  
11 yeah, this is pretty close, and we'll fine-tune it  
12 and we'll get the hard bids and we'll work from  
13 there.

14 So I get this getting as close as I could  
15 to what I'm doing down there, and this is my reality  
16 check on these guys.

17 Q Okay. Let me break that down.

18 Is this like a software program that you  
19 access on your computer?

20 A Yes.

21 Q And does someone have to be a member of an  
22 association in order to be able to acquire that  
23 software?

24 A Not necessarily.

25 Q Okay. How did you acquire that software?

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1           A     On a computer, going on a website. I used  
2 to have a license.

3           Q     So what you did was you went to a website.  
4 Was there some way through the website to access the  
5 program?

6           A     Yes. Means is the only one I know  
7 nationally.

8           Q     And you were able to access the program?

9           A     Yes.

10          Q     All right. And I take it the program asks  
11 you for some variables before it can spit out the  
12 numbers?

13          A     Yes.

14          Q     Okay. Let's talk about those variables.  
15 And if they're shown on here, maybe you can refer me  
16 to those.

17                What would be one variable that you have  
18 to plug into the program?

19          A     Example A was a shop, and basically it's a  
20 shop that's covered with -- it's a metal building  
21 structure, metal framing, metal studs, steel roof  
22 deck, but the outside structure is not a metal  
23 cladding. It's like a dry-bit type situation. And  
24 you try and plug in as close as you can what you  
25 have to fit into their categories to get what you

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1 badly and they budget a million-two and it's  
2 4 million bucks, I'm the guy that's going to get it.

3 So what I did, I went back to Exhibit 72,  
4 and at that time I said two years ago -- two years  
5 ago, I said 120 bucks a square foot. I got 124.61  
6 two years later. I feel pretty good about that. I  
7 feel I'm in the ballpark, okay. So that's basically  
8 what the rest of that is doing.

9 Then in the 120 bucks from 2006 -- and I  
10 clarified it right in the memo -- did not include  
11 architectural; engineering fees; MEPs, which is  
12 mechanical, electrical, plumbing; impact fees and  
13 permit fees.

14 And if you add those numbers in off of Dov  
15 Liven's new estimate, add them to my 120 bucks a  
16 foot, times the square foot, I'm at 134.36. And,  
17 you know, all that really does -- then the last page  
18 is I've got them all. I made a synopsis of it. I'm  
19 within 20 cents of TBT. And without the fees, I was  
20 120. Means is 132. So I've got an idea what this  
21 project is worth.

22 Q Okay. On the last page, page 6 of your  
23 notes, you refer to an e-mail. You mention "Mike  
24 Finigan at Marsh," an e-mail from Mike Finigan at  
25 Marsh to Will Franklin on August 21, 2006, "old

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1 building valued" at 800- to 900,000.

2 Do you see that?

3 A Yes.

4 Q Is that an e-mail you looked at?

5 A Yes.

6 Q And in that e-mail, which I don't think  
7 we've looked at today, was there some number that  
8 you had put forth that Mr. Franklin was discussing  
9 with Mr. Finnegan?

10 A I don't know what Will Franklin and Mike  
11 Finigan discussed, but what I know is going back to  
12 my e-mail of August 28th, 2006, when they asked me  
13 about rebuilding it and I was going like this, not  
14 new building, but if I had been able to rebuild the  
15 old building, if it wasn't condemned, what would it  
16 have cost; and at that time, based upon the work  
17 that I had just done with TBT and everything that I  
18 had current, I assigned a value to it. And I don't  
19 remember what it was. It was 826,500 to 850,000  
20 bucks.

21 And someplace, someplace, I saw an e-mail  
22 that said Mike Finigan at Marsh to Will Franklin,  
23 8/21/06, that the old building was valued at 8- to  
24 900, and I'm looking at my e-mail in August, saying,  
25 well, I said 826,500 to 850,000. So we all had to



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1 be in the same ballpark. I don't know where their  
2 number came from, but I know where my number came  
3 from.

4 So this is not germane to what we're doing  
5 here, but this is what I do for a living. My  
6 numbers are good.

7 Q Okay. The building called for in the  
8 current plans, is that building larger than the  
9 building that existed before the hurricane?

10 A Yes.

11 MR. LARSON: Wait for his question to  
12 finish.

13 THE WITNESS: I'm sorry.

14 The new building is 12,800 feet, the  
15 Colton building. The truck warehouse was 8,700  
16 feet.

17 BY MR. RUBY:

18 Q And the office space within the new  
19 building, which was, I think, 5,000 square feet that  
20 we saw in the plans --

21 A I'd have to look back, but -- I don't  
22 remember exactly what the office space is.

23 No. The office space is 7,800 feet.

24 Q Okay.

25 A So our office has grown over the old

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1 site, there wouldn't have been any kind of power to  
2 it yet.

3 MR. RUBY: And then we'll mark as  
4 Exhibit 86 the pile for the modular building, also  
5 known as the double-wide trailer.

6 (Defendant's Exhibit 86 marked  
7 for identification)

8 MR. RUBY: With that, why don't we take a  
9 break.

10 (A brief recess was taken.)

11 BY MR. RUBY:

12 Q Okay. Mr. Carson, one of the topics for  
13 which you were designated is No. 21, the extent to  
14 which such extra expenses avoided or minimized the  
15 suspension of business at the Miami property and  
16 allowed Copart to continue operations there. I  
17 think we covered this, but just to be sure.

18 Are you very familiar with what the  
19 operations were at Copart at Yard 105 before the  
20 hurricane?

21 A Yes.

22 Q Okay. What were the operations?

23 A We had basically opened for business, we  
24 were bringing cars in. The cars were being hauled  
25 in by sub-haulers, contract haulers. Our people

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1 that's two years, that's maybe three years.

2 Q Okay. I'll show you what was marked  
3 previously as Exhibit 24. And I want to direct your  
4 attention to a Statement of Values that is attached  
5 there. And if you go to the page that has Yard 105  
6 on it, which is page CPT25, you'll see that under  
7 "Building," there's a number of 750,000.

8 Do you follow me?

9 A Yes.

10 Q Okay.

11 A Yes, "Building and Improvements," 750,000.

12 Q Right.

13 A Yes, I see it.

14 Q As of the date of the hurricane, so  
15 including all the renovations that Copart had made  
16 to the truck depot, was the cost to rebuild and  
17 replace the entire structure more, less or  
18 equivalent to \$750,000?

19 MR. LARSON: Vague and ambiguous, calls  
20 for speculation, outside the scope of the 30(b)(6).

21 THE WITNESS: Can you repeat that?

22 BY MR. RUBY:

23 Q Sure.

24 We've been looking at some numbers today,  
25 various numbers that have been larger than 750,000,

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1 and I want to try to understand why. We have a  
2 number here of 750,000 that was reported by Copart.  
3 And I'll spare you the details of how that happened,  
4 but this is a number that was reported shortly after  
5 the hurricane, and I'm trying to determine if the  
6 number is accurate or not.

7 And since you've done quite a lot of  
8 analysis and replacement cost estimation for the  
9 yard for the truck depot, I'd like to know if you  
10 have an opinion on whether 750,000 was a fair  
11 approximation at the time of the hurricane of what  
12 it would have cost to rebuild the entire structure.

13 MR. LARSON: Same objections.

14 THE WITNESS: I think it's low. And I  
15 think in my memo of August 2006, I put a valuation  
16 in there with numbers in there that would have  
17 correlated that we can take those numbers by square  
18 footage and extrapolate the 787 square feet out, and  
19 that would give you what I think is the true value  
20 of rebuilding the property and would give you the  
21 true value if the building could have been salvaged  
22 of how much it would have cost to rebuild it.

23 I think the rebuild -- and again, I think  
24 the number to rebuild it, if we had been able to,  
25 was 95 bucks a foot times 8,700 square feet, which I

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1 whatever that average was, 124 to 132 bucks a foot.

2 So is this number a real number for back

3 then? I think it's no.

4 Q If you could turn to Exhibit 28, please,  
5 this is a Statement of Values dated January 19th,  
6 2007. It indicates it was updated by, among others,  
7 Mike Carson?

8 A Sure.

9 Q Now, sir, first of all, have you seen this  
10 document?

11 A No.

12 Q Do you recall sometime around January of  
13 2000 being asked by anyone at Copart to provide some  
14 analysis or opinions about replacement cost values  
15 of any properties owned by Copart?

16 A Yeah, I occasionally get calls, and the  
17 calls usually are from somebody in accounting  
18 saying, we bought this property in Walton, Kentucky,  
19 and it's got four buildings on it, what are the  
20 buildings worth? Well, okay, that one is worth  
21 50,000 as it sits, that one over there is worth  
22 125,000 as it sits.

23 Is that the replacement cost? No.

24 But what's the building worth right now?  
25 That's what it's worth.

1 I, the undersigned, a Certified Shorthand  
2 Reporter of the State of California, do hereby certify:


3 That the foregoing proceedings were taken  
4 before me at the time and place herein set forth; that  
5 any witnesses in the foregoing proceedings, prior to  
6 testifying, were duly sworn; that a record of the  
7 proceedings was made by me using machine shorthand  
8 which was thereafter transcribed under my direction;  
9 that the foregoing transcript is a true record of the  
10 testimony given.

11 Further, that if the foregoing pertains to  
12 the original transcript of a deposition in a Federal  
13 Case, before completion of the proceedings, review of  
14 the transcript [☒] was [☐] was not requested.

15 I further certify I am neither financially  
16 interested in the action nor a relative or employee  
17 of any attorney or party to this action.

18 IN WITNESS WHEREOF, I have this date  
19 subscribed my name.

20  
21 Dated: MAY 28 2008

22  
23   
24 DARCY J. BROKAW  
25 CSR No. 12584